



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2003

Ms. Julia M. Vasquez
Senior Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2003-7517

Dear Ms. Vasquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189700.

The City of Wichita Falls (the "city") received a request for information on grievances filed by city dispatchers. You claim that the requested information is not public information subject to the Public Information Act (the "Act"). In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and have reviewed the submitted information.

We first note that you claim that the requested information is not a completed investigation, and therefore, it is not a public record pursuant to section 552.022 of the Government Code. Section 552.022(a)(1) states that certain information, including completed investigations, is public information and not excepted from required disclosure under the Act except as provided by section 552.108, or unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a)(1). However, section 552.022 does not constitute an exception to disclosure under the Act, nor does it provide that information outside its scope is not "public information." Furthermore, we note that "public information" is defined by section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental

body owns the information or has a right of access to it.” Gov’t Code § 552.002. In this instance, it is clear, and the city does not dispute, that the submitted documents constitute information that has been collected, assembled, or maintained by the city in connection with the transaction of its official business. Therefore, it is public information that may only be withheld if one or more of the exceptions to required disclosure under the Act applies to it.

We now turn to your claims under sections 552.101 and 552.102. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *See Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. Accordingly, we address your section 552.101 and section 552.102 claims together.

Information must be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Found.*, 540 S.W.2d at 685; *see also* Open Records Decision No. 611 at 1 (1992). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses; *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information pertaining to voluntary financial decisions and financial transactions that do not involve public funds, *see* Open Records Decision Nos. 600 (1992), 545 (1990).

On the other hand, a public employee’s job performance does not generally constitute his or her private affairs. Open Records Decision No. 470 (1987); *see* Open Records Decision Nos. 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of complaint is not protected under either constitutional or common-law right of privacy). *See*

also Open Records Decision No. 444 at 5-6 (1986) (public has genuine interest in information concerning public employee's job performance and reasons for dismissal, demotion or promotion). Upon consideration of your arguments and our review of the information at issue, we find that none of it is protected by the common-law right to privacy. Therefore, the city may not withhold any of this information under section 552.101 or section 552.102, and it must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

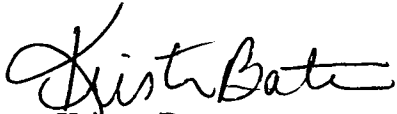
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 189700

Enc. Submitted documents

c: Ms. Rachel Wheat
KFDX Channel 3
4500 Seymour Highway
Wichita Falls, TX 76308
(w/o enclosures)